

# **OKANOGAN COUNTY**

## **ORDINANCE 2010-3**

### **An Ordinance Relating to Standards for the Delivery of Indigent Defense Services**

**WHEREAS**, the Washington Legislature has mandated that counties adopt a legal representation plan that addresses standards for the delivery of indigent defense services (RCW 10.101.030); and

**WHEREAS**, Okanogan County seeks to adopt indigent defense standards;

**NOW THEREFORE BE IT ENACTED** by Okanogan County, through its Board of County Commissioners:

**1.     Contract**

All indigent defense services shall be either paid on an hourly basis determined by the judicial officer in the particular case, or pursuant to a written contract between the indigent defense attorney(s) and Okanogan County, with input, approval and/or ratification from judicial officers.

**2.     Compensation**

Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in the Okanogan County Prosecutor's Office.

Fair pricing should ordinarily be insured through open and transparent requests for proposals and negotiations. If one primary contracting firm or attorney is selected, it is the responsibility of that attorney or firm to meet this compensation and benefits standard for employed and sub-contracting attorneys.

For counsel assigned outside the primary contract, reasonable compensation should be provided. Compensation should reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the case. Counsel assigned outside the primary contract should be compensated for out-of-pocket expenses.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees should be defined in the contract.

Contract attorneys who have a conflict of interest should not have to compensate the new, substituted attorney out of their own funds.

Flat fees, caps on compensation, and lump-sum contracts for trial attorneys are improper in death penalty cases. Private practice attorneys appointed in death penalty cases should be fully compensated for actual time and service performed at a reasonable hourly rate with no distinction between rates for services performed in court and out of court. Periodic billing and payment should be available.

The hourly rate established for lead counsel in a particular case should be based on the circumstances of the case and the attorney being appointed, including the following factors: the anticipated time and labor required in the case, the complexity of the case, the skill and experience required to provide adequate legal representation, the attorney's overhead expenses, and the exclusion of other work by the attorney during the case.

Under no circumstances should the hourly rate for lead counsel, whether private or public defender, appointed in a death penalty case be less than \$125 per hour.

### **3. Duties and Responsibilities of Counsel**

All indigent defense contracts shall require that services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Attorneys will be present at all preliminary appearances in Superior Court whether in-custody or out-of-custody. Counsel will be appointed at the preliminary appearance even though final assignment cannot occur until a conflict check is complete. Cases will not be continued for the purpose of assigning attorneys.

Attorney will be present in every in-custody and out-of-custody first appearance in juvenile offender matters.

Attorney will be present in every in-custody District Court criminal matter. An attorney or representative for the attorney will be present in out-of-custody preliminary appearance calendars to obtain contact information for attorney's office.



Attorneys retained under a contract should not perform other legal work for compensation that will interfere with the adequate representation of clients under the contract or other requirements of the contract. The County may set out specific limitations on an attorney's other legal work in the contract to ensure adequate representation of indigent persons.

Clients must be screened for financial eligibility early in the process. However, much client financial data is considered confidential. The contract should establish a procedure for collecting financial data and verifying eligibility.

An attorney retained under the contract shall not be retained to represent any defendant, or other assigned client, in any matter for which the attorney has already been appointed under the contract, unless the client first makes a request to the Court to permit the attorney to represent him or her upon a retained basis.

**4. Malpractice Insurance**

Contract and sub-contract attorneys shall maintain malpractice insurance with agreed-upon policy limits.

**5. Caseload Limits and Types of Cases**

The contract shall specify the types of cases for which representation shall be provided. Caseloads should allow each attorney to give each client the time and effort necessary to ensure effective representation. No attorney or firm rendering indigent defense services shall accept workloads that interfere with the rendering of reasonable and quality representation. An attorney should not allow his or her private law practice to interfere with the competent representation of indigent defendants. If one primary contracting firm or attorney is selected, that firm or attorney is responsible to insure that a sufficient number of attorneys and staff are available to comply with these standards.

The caseload standards adopted by the Washington State Bar Association, Washington Defenders Association and/or American Bar Association shall be considered as guidelines. A case is defined as the filing of a document wherein a person is designated a defendant or respondent and an attorney is appointed by the court. Adjustments may be made wherein a full case is not attributed in the following non-exclusive circumstances:

- a) A bench warrant is issued before a case is resolved; Probation violation, extradition, restitution hearings, etc., that do not require a full-blown hearing;
- b) Diversions, continuances for dismissal, misdemeanor compromises or similar dispositions;

- c) Drug court, disposition to a re-licensing program, deferred prosecution or other similar procedure;
- d) Early dismissal by a prosecutor based on lack of evidence or standard plea offers, based on the prosecutor's charging and plea bargaining practices or other reasons that dispose of a case without extensive litigation; or
- e) Withdrawal of counsel at an early stage of the case, due to conflict of interest or other reasons.

Attorneys providing indigent defense services, judicial officers and county commissioners should regularly monitor caseloads, including private practice, and attorneys on contract submit at least quarterly reports. The above-mentioned parties should not hesitate to confer and craft a remedy for dealing with caseload issues that materially affect representation of an indigent client. Excessive continuances, missed court dates, client complaints, etc. shall be addressed as soon as practicable.

**6. Services Other Than Counsel**

Reasonable compensation for expert witnesses, interpreters, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided pursuant to Criminal Rule 3.1(f).

**7. Administrative Expenses**

Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, case management systems, the reporting requirements imposed by these standards, and other costs incurred in the day-to-day management of the contract. All attorneys and staff shall have e-mail access and telephone systems that allow reasonable access. Attorneys shall maintain an office for confidential meetings with clients.

**8. Reports of Attorney Activity and Vouchers**

Attorneys on contract shall maintain a case reporting and management information system which includes the number and type of cases, the number and type of cases assigned to each attorney, and the disposition of each case. Any such system shall be maintained independently from client files so as to disclose no privileged information. At a minimum, quarterly reports shall be submitted.

A standardized voucher form shall be used by attorneys seeking payment for services rendered. Payment should be made at times agreed to by the parties, without regard to the number of cases closed in the period.

**9. Training**



Every attorney providing counsel to indigent accused should take the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

**10. Supervision**

Each attorney or firm providing indigent defense services should provide one full-time supervisor in the office qualified under these guidelines to try Class A felonies unless excused by the judges.

**11. Monitoring and Evaluation of Attorneys**

Contracts for indigent defense services will be systematically monitored and evaluated. The primary contracting attorney should establish a procedure for the monitoring and evaluation of attorney performance. Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors and other defense lawyers. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

**12. Substitution of Attorneys or Assignment of Contracts**

The attorney or firm engaged by the respective County to provide indigent defense services shall not subcontract with another firm or attorney to provide representation without prior written approval and shall remain directly involved in the provision of representation. If the contract is with a firm or office, the contracting attorney/firm should provide the names and experience levels of those attorneys who will actually be providing the services to ensure they meet minimum qualifications. Any indigent defense contract shall address the procedures for new counsel taking over upon the conclusion of the contract to ensure a smooth transition upon non-renewal or termination, with the minimal possible detriment to the indigent client. In the case of withdrawal or substitution the attorney shall promptly provide copies of all discovery, reports and witness information together with notes and pertinent information as allowed by the applicable standards of professional responsibility.

**13. Limitations on Private Practice for Contract Attorneys**

New contracts for indigent defense attorneys with private attorneys or firms may set limits on the number of private or special appointment cases which can be accepted by the contracting attorney or provide that the indigent defense contract be a priority over private or special appointment caseloads. An attorney or firm rendering indigent defense services shall not allow his or her private practice or accept special appointments on matters such as death penalty, homicide, three strikes, sexually violent predator actions, and so forth, to diminish his or her ability to represent indigent clients he or she is obligated to serve by any contract.

**14. Qualifications of Attorneys**

- A. In order to assure that indigent accused receive effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services must meet the following minimum professional qualifications:
- (1) Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
  - (2) Be familiar with the statutes, court rules, constitutional provisions and case law relevant to their practice area; and
  - (3) Complete the hours of continuing legal education within each calendar year as set forth in Standard 9; and
  - (4) Be familiar with the collateral consequences of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
  - (5) Be familiar with mental health issues and be able to identify the need to obtain expert services.
- B. Trial attorney's qualifications according to severity or type of case:
- (1) Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case shall meet the following requirements:
    - a. The minimum requirements set forth in Section 14.A.(1); and
    - b. At least five years criminal trial experience; and
    - c. Have prior experience as lead counsel in no fewer than ten jury felony trials which were tried to completion; and
    - d. Has served as counsel in at least one completed jury trial in which the death penalty was sought; and
    - e. Has completed at least one seminar containing a death penalty section; and
    - f. Meet the requirements of SPRC 2.
  - (2) Adult Felony Cases — Class A Felonies or Persistent Offender Representation. Each attorney representing a defendant accused of a Class A felony or each attorney acting as lead counsel in a case where the defendant is subject to sentencing under R.C.W. 9.94A.570 shall meet the following requirements:
    - a. Minimum requirements set forth in Section 14.A.(1); and



- b. Either: has served two years as a prosecutor, served two years as appointed counsel for indigent defendants or two years in private criminal practice, and
  - c. has been trial counsel alone or with other trial counsel and has handled a significant portion of the trial of three felony cases that have been submitted to a jury.
- (3) Adult Felony Cases — All Other Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B Felony or a Class C Felony, or involved in a probation or parole revocation hearing shall meet the following requirements:
  - a. Minimum requirements set forth in Section 14.A.(1); and
  - b. Either: Has served one year as a prosecutor; or has served one year as appointed counsel for indigent defendants or two years on private criminal practice; and
  - c. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
  - d. Shall be accompanied at his or her first felony trial by a supervisor.
- (4) Juvenile Cases. Each attorney representing a juvenile accused shall meet the minimum requirements set forth in Section 1 shall meet the same criteria listed in Sections 14.A.(2) and 14.A.(3) for an adult offense of the same offense level.
- (5) Misdemeanor Cases and Mental Commitment Hearings. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement shall meet the requirements as outlined in Section 14.A.(1);
- (6) Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:
  - a. The minimum requirements as outlined in Section 14.A.(1); and
  - b. Attorneys handling deprivation/termination hearings shall have six months dependency experience or six months comparable experience regarding child custody issues.

C. Legal Interns.

1. Legal interns must meet the requirements set out in Admission to Practice Rule (APR) 9.
2. Legal interns shall receive training pursuant to APR 9.

**15. Disposition of Client Complaints**

The following procedure shall be utilized for responding to client complaints: Complaints should first be directed to the attorney, firm or agency which provided representation. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.

**16. Cause for Termination or Removal of Attorney**

Contracts for indigent defense services should include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for good cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; the willful disregard of the standards herein addressed; or violations of the Rules of Professional Conduct (RPCs).

The representation in an individual case establishes an inviolable attorney-client relationship, Removal of counsel from representation, therefore, should not occur over the objection of both the attorney and the client.

**17. Non-Discrimination**

Neither the respective County, in its selection of an attorney, firm or agency to provide indigent defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital or military status, sex, sexual orientation or disability.

**18. Guidelines for Awarding Defense Contracts**

The County should award contracts for indigent defense services only after determining that the attorney or firm chosen can meet accepted professional standards and the qualifications outlined in Section 14. Under no circumstances will a contract be awarded on the basis of cost alone. Attorneys or firms seeking contracts for indigent defense services must demonstrate their ability to meet these standards.

Prosecutors and law enforcement officers shall not select the attorneys who will provide indigent defense services.



**19. Purpose of Standards**

Adoption of this ordinance shall in no way be construed to create a civil penalty or cause of action against either the attorney(s) or the County.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**BOARD OF OKANOGAN COUNTY COMMISSIONERS**

\_\_\_\_\_  
Andrew Lampe, Chairman

  
\_\_\_\_\_  
Mary Lou Peterson, Member

\_\_\_\_\_  
Don 'Bud' Hover, Member

19. **Purpose of Standards**


Adoption of this ordinance shall in no way be construed to create a civil penalty or cause of action against either the attorney(s) or the County.

DATED at Okanogan, Washington this 20 day of July 2010.

BOARD OF COUNTY COMMISSIONERS  
OKANOGAN, WASHINGTON

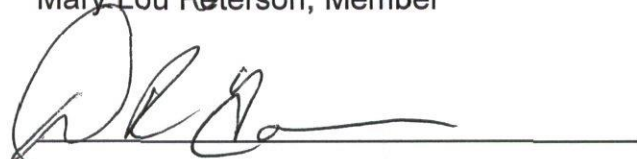


ATTEST:

  
Brenda J. Crowell, Clerk of the Board

  
Andrew Lampe, Chairman

  
Mary Lou Peterson, Member

  
Don "Bud" Hover, Member